IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4176 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HALIMALI FAKIRCHAND - Petitioner(s)

Versus

NARANDAS JIVANDAS THAKKAR - Respondent(s)

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Appearance :

MR DS VASAVADA for Petitioner(s) : 1,
MR DM THAKKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/12/2005

ORAL JUDGMENT

1. The petitioner, namely, Halimali Fakirchand and others, have filed this petition under

Articles 226 and 227 of the Constitution of India, praying for quashing and setting aside the order passed by the learned Judge of the Labour Court in Bidi Sigar Appeal No.3 of 1983 which was decided on 13.12.1995. The petitioner has also prayed for the direction to the respondent to reinstate the petitioners workmen to their original post by payment of full back wages.

2. The Labour Court while disposing of the Appeal on 13.12.1995 has partly allowed the said Appeal and directed the respondent to pay the notice pay with 12% interest within one month from the date of the receipt of the said award.

3. Mr.D.S.Vasavda, learned advocate appearing for the petitioners has submitted that while deciding the Appeal, learned Labour Judge has

not considered the issue regarding violation of provision contained in Section 25(f),(g) and (h) of the Industrial Dispute Act. In support of his contention he has relied on the decision of M.P.High Court in the case of Ganesh Prasad Koshta vs. Asstt. Labour Commissioner, Jabalpur Etc., reported in 1989 (5) FLR, 280. Mr.Vasavda has, therefore, submitted that the award passed by the learned Labour Judge in Appeal No.3 of 1983 is absolutely unlawful and in violation of the provision contained in the Industrial Dispute Act and, therefore, the said award is required to be quashed and set aside.

4. Mr.D.M.Thakkar, learned advocate appearing for the respondent has submitted that the learned Labour Court Judge has given finding of fact on certain issues raised in the award. He has further submitted that the petitioners have filed Appeal before the Labour Court under the

provision of Bidi and Sigar Workers' (Condition of Employment) Act, 1966. The Labour Court has decided the appeal on the basis of the provisions of the said Act and has come to the conclusion that the State Government has framed the Bidi and Sigar Workers (Conditions of Employment) (Gujarat) Rules, 1968. Rule 26(2) says that an employee discharged, dismissed or retrenched may prefer an appeal under Sub Rule (1) within a period of 30 days from the date of communication of the order of such discharge, dismissal or retrenchment. The Labour Court has further observed that Section 31 of Bidi and Sigar Workers (Conditions of Employment) Act, 1966, states that no employer shall dispense with the services of an employee who has been employed for a period of six months or more except for a reasonable cause and without giving such employee at least one month notice or wages in lieu of such notice. Considering

the said provision the Labour Court has come to the conclusion that the respondent has issued notice alongwith one month's salary and thereby complied with the said condition. The Labour Court has observed that most of the appellants have settled their dispute with the respondent and appellant No.1 has also taken all his benefits. Considering all these aspects, the Labour Court has passed the award with regard to the payment of notice pay alongwith interest at the rate of 12%. The Labour Court has also awarded cost of Rs.100/-.

5. Mr.Thakkar further submitted that this is the finding of fact arrived at by the Labour Court after appreciation of evidence and hence this Court while exercising its extraordinary powers under Article 227 of the Constitution of India, should not interfere in the said finding.

6. The Court has considered submissions made by both the learned counsels. The fact still remains that the present petitioners have preferred an Appeal under Bidi and Sigar Workers (Condition of Employment) Act and has not raised disputes under the provisions contained under the Industrial Disputes Act. There is no adjudication so far as those issues are concerned. The Court is, therefore, of the view that if the present petitioners are, if at all, aggrieved by the action of the respondent, they shall raise an Industrial Dispute before the Labour Court and if such a dispute is raised before the Labour Court, the same should be decided by the Labour Court in accordance with law and on its merits without being influenced by the earlier order dated 13.12.1995 passed in Appeal No.3/1983 or by this order. It is also made clear that this Court has not passed this order on merits of

the rival contentions raised before the Court and has not expressed any opinion.

7. Subject to the aforesaid observations and directions, the present petition is accordingly disposed off. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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